

*Special education* as defined in 34 CFR 300.39.

(Authority: 20 U.S.C. 1401, 1414, 1432, 1436, 7703, 7705, 7713; 34 CFR parts 300 and 303)

[80 FR 33166, June 11, 2015]

**§ 222.51 Which children may a local educational agency count for payment under section 8003(d) of the Act?**

(a) An LEA may count children described in sections 8003(a)(1)(A)(ii), (a)(1)(B), (a)(1)(C), and (a)(1)(D) of the Act who are eligible for services under the provisions of Part B or Part C of the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*) (IDEA), for the purpose of computing a payment under section 8003(d) in accordance with the provisions of this section.

(b)(1) An LEA may count a child with a disability described in paragraph (a) of this section who attends a private school or residential program if the LEA has placed or referred the child in accordance with the provisions of section 613 of the IDEA and 34 CFR part 300, subparts C and D.

(2) An LEA may not count a child with a disability described in paragraph (a) of this section who is placed in a private school by his or her parents, but that child may participate in public school programs that use section 8003(d) funds.

(c) An LEA may count infants and toddlers with disabilities described in paragraph (a) of this section if—

(1) The LEA provides early intervention services or FAPE to each of those children—

(i) Either directly or through an arrangement with another entity; and

(ii) The State does not charge a fee or other out-of-pocket cost to the child's parents under the State's system of payments on file with the Secretary required under 34 CFR 303.203(b)(1), 303.520, and 303.521, and there is no other cost to the child's parents (the costs of premiums do not count as out-of-pocket costs); and

(2) Each of those children has an IFSP or IEP (as appropriate).

(Authority: 20 U.S.C. 1400 *et seq.* and 7703(d))

[80 FR 33166, June 11, 2015]

**§ 222.52 What requirements must a local educational agency meet to receive a payment under section 8003(d)?**

To receive a payment under section 8003(d), an eligible LEA shall—

(a) State in its application the number of federally connected children with disabilities it claims for a payment under section 8003(d);

(b) Have in effect written IEPs or IFSPs for all federally connected children with disabilities it claims under section 8003(d); and

(c) Meet the requirements of subparts A and C of the regulations in this part.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 1400 *et seq.* and 7703)

[60 FR 50778, Sept. 29, 1995, as amended at 80 FR 33166, June 11, 2015]

**§ 222.53 What restrictions and requirements apply to the use of funds provided under section 8003(d)?**

(a) An LEA shall use funds provided under section 8003(d) in accordance with the provisions of section 8003(d)(2) and 34 CFR parts 300 and 303.

(b) Obligations and expenditures of section 8003(d) funds may be incurred in either of the two following ways:

(1) An LEA may obligate or expend section 8003(d) funds for the fiscal year for which the funds were appropriated.

(2) An LEA may reimburse itself for obligations or expenditures of local and general State aid funds for the fiscal year for which the section 8003(d) funds were appropriated.

(c) An LEA shall use its section 8003(d) funds for the following types of expenditures:

(1) Expenditures that are reasonably related to the conduct of programs or projects for the free appropriate public education of, or early intervention services for, federally connected children with disabilities, which may include—

(i) Program planning and evaluation; and

(ii) Construction of or alteration to existing school facilities, but only when in accordance with section 605 of the IDEA and when the Secretary authorizes in writing those uses of funds.

## § 222.54

## 34 CFR Ch. II (7–1–15 Edition)

(2) Acquisition cost (net invoice price) of equipment required for the free appropriate public education of, and early intervention services for, federally connected children with disabilities.

(i) If section 8003(d) funds are used for the acquisition of any equipment described in this paragraph (c)(2) of this section, the fair market value of any financial advantage realized through rebates, discounts, bonuses, free pieces of equipment used in a program or project for the free appropriate public education of, or early intervention services for, federally connected children with disabilities, or other circumstances, is not an allowable expenditure and may not be credited as an expenditure of those funds.

(ii) Funds awarded under the provisions of section 8003(d) may be used to acquire equipment for the free appropriate public education of, or early intervention services for, the federally connected children with disabilities only if title to the equipment would be in the applicant agency.

(d) An LEA shall account for the use of section 8003(d) funds as follows:

(1) By recording, for each fiscal year, the receipt (or credit) of section 8003(d) funds separately from other funds received under the Act, *i.e.*, on a line item basis in the general fund account or in a separate account; and

(2) By demonstrating that, for each fiscal year, the amount of expenditures for special education and related services and for early intervention services provided to the federally connected children with disabilities is at least equal to the amount of section 8003(d) funds received or credited for that fiscal year. This is done as follows:

(i) For each fiscal year determine the amount of an LEA's expenditures for special education and related services and for early intervention services provided to all children with disabilities.

(ii) The amount determined in paragraph (d)(2)(i) of this section is divided by the average daily attendance (ADA) of the total number of children with disabilities the LEA served during that fiscal year.

(iii) The amount determined in paragraph (d)(2)(ii) of this section is then multiplied by the total ADA of the

LEA's federally connected children with disabilities claimed by the LEA for that fiscal year.

(3) If the amount of section 8003(d) funds the LEA received (or was credited) for the fiscal year exceeds the amount obtained in paragraph (d)(2)(iii) of this section, an overpayment equal to the excess section 8003(d) funds is established. This overpayment may be reduced or eliminated to the extent that the LEA can demonstrate that the average per pupil expenditure for special education and related services and for early intervention services provided to federally connected children with disabilities exceeded its average per pupil expenditure for serving non-federally connected children with disabilities.

(Approved by the Office of Management and Budget under control number 1810-0036)

(Authority: 20 U.S.C. 7703(d))

[60 FR 50778, Sept. 29, 1995, as amended at 80 FR 33166, June 11, 2015]

### § 222.54 What supplement-not-supplant requirement applies to this subpart?

Funds provided under section 8003(d) may not supplant any State funds that were or would have been available to the LEA for the free appropriate public education of children counted under section 8003(d).

(a) No section 8003(d) funds may be paid to an LEA whose per pupil State aid for federally connected children with disabilities, either general State aid or special education State aid, has been or would be reduced as a result of eligibility for or receipt of section 8003(d) funds, whether or not a State has a program of State aid that meets the requirements of section 8009 of the Act and subpart K of the regulations in this part.

(1) A reduction in the per pupil amount of State aid for children with disabilities, including children counted under section 8003(d), from that received in a previous year raises a presumption that supplanting has occurred.

(2) The LEA may rebut this presumption by demonstrating that the reduction was unrelated to the receipt of section 8003(d) funds.